

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

PETITION BY MCI FOR ARBITRATION OF CERTAIN	)	
TERMS AND CONDITIONS OF A PROPOSED	)	
AGREEMENT WITH BELL SOUTH	)	CASE NO. 96-431
TELECOMMUNICATIONS, INC. CONCERNING	)	
INTERCONNECTION AND RESALE UNDER THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

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**O R D E R**

The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 ("the Act") was enacted to open all telecommunications markets to competition. See Conference Report, H.R. Rep. No. 458, 104th Cong., 2d Sess., at 113 (1996). Section 251 of the Act requires incumbent local exchange carriers to negotiate interconnection agreements in good faith with new entrants to the local exchange market. Section 252 permits the parties to those negotiations to petition a state commission to arbitrate unresolved issues. Subsection (b)(4)(C) states that the state commission "shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement." Subsection (b)(4)(A) requires the Commission to "limit its consideration . . . to the issues set forth in the petition and in the response." Subsection (b)(4)(C) requires the Commission to resolve the issues presented not later than nine months after the date on which the incumbent local exchange carrier received the request for negotiations.

On March 26, 1996, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (hereinafter collectively "MCI") submitted a request for negotiations to BellSouth Telecommunications, Inc. ("BellSouth"). The parties were unable to agree on numerous issues. On September 3, 1996, MCI submitted its petition for arbitration to this Commission. Pursuant to Section 252(b)(4)(c) of the Act, this proceeding is to be concluded by December 26, 1996.

Numerous issues have been raised in this proceeding, and have been argued by the parties in filed documents and testimony, at hearing, in briefs, and in their best and final contract offers and accompanying explanations. Some issues are broad, involving policy and law; others are specific pricing issues. Our discussions of the issues enumerated in the petition and not yet resolved by the parties are included in the body of this Order. Decisions regarding specific pricing are included in Appendix 1. As a final introductory matter, the Commission notes that the parties have submitted their disagreements regarding contract terms. Many of the issues so raised are of minimal, if any, significance. In addition, BellSouth describes certain issues as "open" but not in disagreement. The Commission does not consider these issues subject to arbitration and orders the parties to reach a compromise on these issues and to include final, agreed upon language in the final contract. The Commission's resolution of the issues presented should enable the parties to decide upon language for the two-year contract and submit it for approval pursuant to Section 252(e)(1), within 60 days of the date of this Order.

The emphasis of the Act is on free negotiation between the parties. Accordingly, should BellSouth and MCI wish to alter any aspect of the contract based on decisions

reached herein, they may negotiate such alteration and submit it to this Commission for approval. Further, the Commission encourages the parties to return to the Commission on rehearing with any specific, narrowly-defined issues they believe are appropriate for rehearing. Finally, the Commission will require appropriate studies to be submitted by BellSouth to enable the Commission to make necessary adjustments as described infra.

**I. SERVICES TO BE OFFERED FOR RESALE  
AND RESTRICTIONS THEREON**

MCI states the Act requires BellSouth to offer for resale without exclusion any telecommunications service that it provides at retail to end-user customers who are not telecommunications carriers. BellSouth states that the following services should be excluded from resale: Lifeline/Link-Up service; promotional and trial retail service offerings of less than 90 days; N11, 911, E911 services; and legislatively or administratively mandated discounts. BellSouth further contends that the services available for resale should be subject to the same terms and conditions, including use and user restrictions, contained in BellSouth's General Subscriber Services tariffs. BellSouth also argues that grandfathered services should be made available only to customers of the service at the time the service was grandfathered. Contract Service Arrangements ("CSA"), BellSouth says, should be available for resale but without discount from the retail price. Finally, BellSouth suggests that MCI be subject to the joint marketing prohibition found in Section 271(e) of the Act.

The Act leaves little room for argument on the issue of which services must be available for resale. As MCI points out, Section 251(c)(4) requires BellSouth to "offer for resale at wholesale rates any telecommunications service" it provides "at retail to

subscribers who are not telecommunications carriers." BellSouth is also forbidden to "prohibit" or to "impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service." Id. State commissions may, however, prohibit a reseller from offering a resold service that is available at retail to a certain category of customers from offering that service to a different category of customers. Therefore, with the modifications and exceptions discussed herein, BellSouth shall offer all services for resale at wholesale discount.

## Grandfathered Services

BellSouth's contention that grandfathered services should be available only on the same terms and conditions as they are made available to BellSouth's customers is appropriate, and conforms with the FCC's rules.<sup>1</sup> Similarly, this Commission discussed grandfathered services in Administrative Case No. 355<sup>2</sup> and supports BellSouth's and the FCC's limitations on the resale of these services.

## Contract Service Arrangements

CSAs allow BellSouth to price services below tariffed rates to meet competition. BellSouth proposes to make CSAs available for resale at no discount, because in BellSouth's opinion CSAs reflect a competitive price. The Commission allows LECs to offer CSAs in order to be able to compete with other providers of similar services.

<sup>1</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and order, CC Docket No. 96-98 (August 8, 1996), ("FCC Order"), at Paragraph 968.

<sup>2</sup> Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and The Non-Traffic Sensitive Access Rate, Order dated September 26, 1996.

Apparently the availability of a CSA has allowed BellSouth to compete effectively; therefore, the rates included in a CSA can be considered competitive. To allow ALECs to offer CSAs at a further discount would put BellSouth at a competitive disadvantage. Therefore, the Commission will require that CSAs be available for resale at no additional discount.

#### Means-Tested Service

The FCC Order allows states to prohibit the resale of means-tested service offerings to end-users not eligible to subscribe to such service offerings. However, the FCC does not prohibit the resale of local service to qualifying low income subscribers. Link-Up assists certain subscribers receiving low income assistance by providing a credit of up to \$30.00 against installation and service charges of a LEC for connection to the network. If a subscriber qualifies for Link-Up assistance, there is no limit to the number of times the subscriber can drop, then re-establish, the service and benefit from the payment. BellSouth points out that its Link-Up program is funded through the interLATA National Exchange Carrier Association ("NECA") process in which it is reimbursed for the discount given to the eligible subscriber. If the program is available for resale, BellSouth opines, it would be funding a reseller's offering of such a program.

It is not the intent of the Commission to allow one carrier to subsidize or fund the means-tested programs of other carriers. If a subscriber receives the benefit from Link-Up when he connects to the network through one carrier and then switches carriers, the original carrier will not be responsible for providing a Link-Up benefit if that subscriber drops off the network and then comes back on with the second carrier. Each carrier will

be responsible for funding its own Link-Up benefit. The Commission will allow Link-up service to be resold under the above conditions.

### Promotions

The FCC and this Commission have previously concluded that short-term promotional services, which last for a period of 90 days or less, are not subject to resale. The Commission affirms its decision herein.

### N11 and 911 Services

BellSouth asserts that N11, 911 and E911 services should not be resold because they are not retail services provided to end-users, but are instead offered to governmental entities that in turn provide the actual services to end-users. BellSouth also points out that N11 service is not currently offered by it in Kentucky. When N11 services are offered by BellSouth, the Commission will consider the question of resale based upon the relevant facts existing at that time.

Emergency services of 911 and E911 are sold at retail to governmental bodies at tariffed rates. Therefore, these services shall be available for resale at the wholesale discount. Because these services are only available to a limited class of customers, MCI shall adhere to the restrictions contained in BellSouth's tariff.

The Commission has included access to 911/E911 services, where available, in its basic definition of local exchange service. When BellSouth resells a local exchange line, it shall include the provision of 911/E911 service with that local exchange line. However, the discount rate shall not be applied to the surcharge applicable to the



provision of 911/E911 service. That is collected on behalf of the governmental entity. MCI will be required to collect and remit the appropriate tax to each governmental entity.

#### Mandated Discounts

BellSouth opines that if any discounted rates it is required to provide to entities such as educational institutions are available for resale, BellSouth would be funding the reseller's offering of such services. Since these services are already offered at some discount from the retail rate, they should not be required to be subject to the wholesale rate obligation, and the Commission will not require them to be offered for resale.

#### Joint Marketing

BellSouth argues that MCI should be subject to the prohibition of Section 271(e)(1) of the Act. A telecommunications carrier with more than 5 percent of the Nation's presubscribed access lines is prohibited from bundling resold telephone exchange service obtained from the incumbent Bell Operating Company ("BOC") with its own interLATA services. The prohibition period is 36 months from the date of the Act's enactment or until a BOC is authorized to provide in-region InterLATA services, whichever comes first. MCI is prohibited from joint marketing in accordance with the Act.

#### Tariff Terms and Conditions

BellSouth states that the telecommunication services available for resale are subject to the terms and conditions, including use and user restrictions, contained in BellSouth's general subscriber services tariff. The Commission agrees that the general subscriber tariff of any incumbent LEC should be the basis for the terms and conditions

of resale offered to competitors. For example, CENTREX features and functions (BellSouth MULTISERV service) will be offered for resale, as proposed by BellSouth, with the same functions, features and service levels that BellSouth provides to its end-users.

## **II. BRANDING OF RESOLD SERVICES**

MCI argues that directory assistance service and operator services should be branded as it requests and that it should have the option of providing its own branding material. BellSouth opines that it is not required by the Act to brand operator or directory services on an individual brand basis, and that such branding is not technically feasible.

However, the FCC has concluded that where operator, call completion or directory assistance is part of a service or service package, failure of the LEC to comply with branding requests presumptively constitutes an unreasonable restriction on resale except in cases when it is technically not feasible.<sup>3</sup> The LECs should, however, be compensated for costs incurred in complying with branding requests by the carrier which made the request.

The Commission finds, therefore, that in those instances where branding is technically feasible it should be provided for operator services. However, the Commission will not require BellSouth to brand directory assistance for MCI because it does not brand its own.

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<sup>3</sup> See FCC Order, Paragraph 971.

Where branding does take place, BellSouth shall determine the additional cost it will incur to provide it and bill MCI for such costs. MCI or BellSouth may petition the Commission for resolution of any billing disputes. Should BellSouth initiate branding of its directory assistance, it must also offer competitors the option to have their calls branded.

BellSouth argues it should not be responsible for leaving MCI branded cards at MCI customer locations when BellSouth employee or agents interact with MCI customers. The Commission finds, however, that drop-off cards should be branded if MCI provides the cards to BellSouth and absorbs their cost.

### III. RESALE RATES

Section 252(d)(3) of the Act directs that wholesale rates be based on retail rates minus avoided costs, e.g., costs attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier.

The FCC interprets this portion of the Act as requiring states to make an objective assessment of what costs are reasonably avoidable when a LEC sells its services at wholesale.<sup>4</sup> The FCC's prescribed methodology encompasses a number of Uniform System of Accounts, Part 32 ("USoA") accounts which, in its judgment, include expenses a LEC would not incur in a wholesale environment. The FCC allocated directly avoidable costs as well as a portion of general support expenses (Accounts 6121-6124), corporate

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<sup>4</sup> FCC Order at paragraph 911.

operations expenses (Accounts 6711, 6712 and 6721-6728), and uncollectibles (Account 5301) to the avoidable expense category.

In the FCC's methodology the directly avoidable costs included 100 percent of the expenses in the call completion and number service accounts (Accounts 6621 and 6622) and 90 percent of the expenses in product management, sales, product advertising and customer services (Accounts 6611, 6612, 6613 and 6623). Call completion and number service expenses are totally avoided because, under the FCC's interpretation of avoided costs, these accounts are comprised of expenses which a LEC would no longer incur if it ceased retail operations and provided all of its services through resellers.<sup>5</sup> With regard to product management, sales, product advertising and customer services, the FCC allows 10 percent of the expenses to be considered nonavoidable because some expenses would be incurred for wholesale products and customers and some new expenses might be incurred in addressing resellers' needs.<sup>6</sup> Finally, the FCC rules are rebuttable presumptions.<sup>7</sup> These portions of the FCC order have been stayed by the Eighth Circuit Court of Appeals and, consequently, are not binding.

MCI's avoided cost study follows the FCC's methodology, and is based on BellSouth financial data filed with the FCC Automatic Reporting Management Information System ("ARMIS") 43-04. It produces an 18.89 percent discount rate.

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<sup>5</sup> Id.

<sup>6</sup> Id. at Paragraph 928.

<sup>7</sup> Id. at Paragraph 909.

BellSouth submitted two avoided cost studies. The first assumes that many functions now performed in providing retail services will not be avoided on resale. This study focused only on those expenses found in Account 6623, customer services, and produces discount rates of 9.73 percent for residential service and 9.01 percent for business service.

The second study submitted by BellSouth incorporates the FCC's indirect expense allocation methodology with direct expenses analyzed by account and by job function code. This study resulted in a discount factor of 12.5 percent, significantly different from the discount factor resulting from the methodology used to compute the FCC's proxy wholesale discount rates.

Setting appropriate wholesale discount rates is crucial to the development of a competitive market in Kentucky. If the discount is too high, competitors will resell and lose the incentive to construct facilities. If the discount is too low, resale competition may not develop at all. We seek primarily to encourage facilities-based competition.

The Commission does not agree fully with the methodology used by the FCC in computing its proxy rates, nor does it fully agree with the BellSouth sponsored study. Therefore, the methodology the Commission will use to determine the wholesale discount is based upon the BellSouth study using the FCC methodology as modified by the Commission. The analysis of the directly avoided costs by job function code is reasonable and superior to the FCC's estimation for Accounts 6611-6613 and 6623. Therefore, the Commission will accept BellSouth's avoided costs for these accounts.

However, the Commission does not agree with BellSouth that call completion and number service accounts are 100 percent nonavoided.

The impact of resale competition on a LEC's expenses can only be determined over time as the market develops. Initial attempts at determining the appropriate avoided costs and discount rate are estimates which may be expected to change. If the initial discount is reasonable, competition will develop and the market will force the discount rate to the appropriate level. As the market develops it is probable that the nature and level of a LEC's expenses will change as its retail business changes to a combination of retail and wholesale businesses. The Commission concludes that a reasonable initial estimate of the avoided costs in call completion and number service accounts is 75 percent. The impact of this change results in the directly avoided costs increasing from the \$43,873 mil. estimated by BellSouth to \$52,777 mil. The Commission also assumes that a portion of overhead expenses will also be avoided. The change to Accounts 6621 and 6622 results in an increase in the indirect cost allocation from 8.34 percent to 10.04 percent and an increase in indirect avoided costs from \$10,988 mil. to \$13,224 mil. These changes produce a 15.1 percent overall discount factor as opposed to the 12.5 percent factor calculated by BellSouth. See Appendix 1A. A 15.1 percent rate is the appropriate overall discount factor to be used at this time.

The BellSouth sponsored analysis computes a discount rate for both residential and business resale, while the BellSouth study based on the FCC methodology generates the single overall discount rate. The Commission agrees with BellSouth's

rationale for computing separate residential and business rates and will, therefore, use its analysis to determine a residential and business discount based on the 15.1 percent overall discount rate. The calculation results in a residential discount rate of 15.56 percent and a business discount rate of 14.41 percent. See Appendix 1B.

These rates shall remain in effect for the term of the contract. At the end of the applicable period, BellSouth or MCI may petition the Commission to conduct a review to determine if these rates should be modified. BellSouth shall maintain the necessary records to allow the Commission to determine the costs avoided as a result of resale operations and to make a reasonable judgment as to a going forward discount rate.

#### IV. ROUTING OF 0+, 0-, 411, 611, AND 555-1212 CALLS

In accordance with Administrative Case No. 355, the Commission will not require BellSouth to furnish resold tariffed services minus operator services. In contrast, if a carrier provides service through unbundled elements, in the interim BellSouth shall retain 0+, 0-, 411, 611, and 555-1212 calls. As the network evolves and an industry solution is available, BellSouth shall offer these services to unbundled providers.

#### V. TRUNKING ARRANGEMENTS

The Commission agrees with BellSouth that it should provide two way trunking for local traffic to MCI in accordance with FCC mandates.<sup>8</sup> Interexchange and local traffic should be segregated prior to two way trunking.

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<sup>8</sup> Id. at Paragraph 219.

## **VI. COMPENSATION FOR EXCHANGE OF LOCAL TRAFFIC**

MCI argues that the transport and termination of local traffic should use symmetrical rates based on TELRIC principles. The FCC Order, it asserts, permits mutual traffic exchange only for the physical interconnection between two networks and requires reciprocal symmetrical compensation for transport and termination of traffic. The price for transport termination, MCI contends, should be set in accordance with TELRIC principles and the Hatfield model prices for tandem switching, local switching and transport.

On the other hand, BellSouth asserts that there should be mutual reciprocal compensation but that it should be based on traffic sensitive switched access charged rates because local interconnection provides the same functionality as switched access. Substituting other prices, according to BellSouth, will expand the local calling areas beyond the existing boundaries and will erode basic service support currently received from access charges.

Section 252(d)(2) requires the commissions to consider terms and conditions for reciprocal compensation to be just and reasonable only if (1) they provide for mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facility of calls that originate on the network facilities of the other carrier, and (2) if they determine costs on the basis of a reasonable approximation of the additional cost of terminating calls. The Commission is aware of the cost to alternative LECs to begin a process of reciprocal compensation. It is also aware that the market will be best served by swift development of the necessary recording and billing arrangements to provide reciprocal compensation among local carriers. However, in order to encourage



immediate development of meaningful local competition, the Commission will permit bill and keep arrangements for no more than one year. Though the term of this contract is two years, MCI and BellSouth shall submit within a year of this order a modification to their contract requiring mutual compensation if MCI elects to bill and keep for the first year of this contract.

The pricing for termination of local calls should be at TELRIC. BellSouth argues tariffed access rates are more appropriate than TELRIC. However, compensation for local calls should be based on actual cost instead of subsidies that are present in existing rates. If the parties are unable to agree on an appropriate TELRIC-based price, they may petition the Commission for resolution and submit cost support.

#### VII. NETWORK ELEMENTS: TECHNICAL FEASIBILITY AND PRICING

BellSouth shall offer nondiscriminatory access to the submitted list of network elements to MCI. This includes the network interface device; the unbundled loop; loop distribution; loop concentration; local switching; operator systems; multiplexing/digital cross-connect/channelization; dedicated transport; common transport; tandem switching; AIN capabilities; signaling link transport; signal transfer points; and service control points or databases. The FCC states that technical feasibility exists if there are no technical or operational concerns preventing fulfillment of a request for interconnection, access or methods.<sup>9</sup> The Commission agrees with this reasoning, and therefore determines that it is technically feasible to provide each of the requested network elements.

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<sup>9</sup> FCC Order, Appendix B, Section 51.5.

### VIII. COST STUDY METHODOLOGIES

MCI and BellSouth submitted cost studies which rely upon different methodologies and purport to calculate the forward looking TELRIC cost of BellSouth's unbundled network elements. Both companies have employed considerable effort throughout these proceedings to explain and defend their cost models. MCI used the Hatfield model to derive its estimates of BellSouth's TELRIC element costs. MCI readily acknowledged that its model does not reflect BellSouth's actual network design and costing processes. However, MCI argues that the model produces a reasonable approximation of BellSouth's unbundled network element TELRIC costs. MCI further states that the primary advantages of the Hatfield model over BellSouth's TELRIC studies are its reliance upon publicly available ARMIS data and openness to public scrutiny. BellSouth's TELRIC studies use engineering process models and certain accounting data to estimate its forward looking TELRIC costs.

The Commission finds that the Hatfield model is a useful tool which can be used as an independent estimate to check the reasonableness of BellSouth's TELRIC estimates, particularly since the assumptions underlying the Hatfield model are available for public scrutiny. The Commission also finds that BellSouth's TELRIC cost study methodology will provide the best estimate of its unbundled network element TELRIC cost. However, there are indications in the record that some of the assumptions underlying BellSouth's TELRIC studies may have led to overstated unbundled network element costs estimates.

First, the results of BellSouth's TELRIC local loop study in this case substantially conflict with those of a similar study filed in Administrative Case No. 355. The latter study

produced a loop rate (2-wire) substantially below the TELRIC rate claimed in this case. Under cross-examination and through a late filed exhibit, BellSouth attempted to explain the different assumptions underlying the two studies. It is not clear from these explanations that the magnitude of apparent difference in loop costs is justified.<sup>10</sup> Further investigation is necessary to satisfy Commission concerns regarding the assumptions underlying BellSouth's TELRIC studies for loops and other network elements.

BellSouth's TELRIC estimates include directly attributable forward looking shared and common costs. BellSouth makes an upward adjustment of 8.04 percent to account for indirect shared and common costs attributable to respective unbundled network elements. BellSouth also seems to have included the Network Interface Device ("NID") in its TELRIC loop calculations. In an unbundled network element environment, NID and loop costs should be calculated separately.

BellSouth's unbundled network element pricing proposal is in two phases. Phase one consists of a combination of tariffed rates on selected items and true-up rates on other items. The true-up rates are generally in the neighborhood of BellSouth's TELRIC estimates and are designed to allow competitors to begin operating in BellSouth's local markets. Phase two is proposed to begin as soon as BellSouth completes cost studies which account for respective network element associated historical costs. The true-up rates will be adjusted to reflect the new cost studies. Competitors will either be assessed or refunded the difference between the true-up rates and new cost figures

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<sup>10</sup> The Commission is very concerned about the validity of the Administrative Case No. 355 loop study as well as the spirit in which it was submitted.

calculated back to the date of interconnection. The Commission rejects this pricing proposal. When necessary, all arbitrated unbundled network element rates will be adjusted on a prospective basis.

The Commission finds that the appropriate price for an unbundled network element should cover its incremental cost, described in this case as TELRIC, as well as a reasonable portion of shared and common cost. Cost study assumptions should be forward looking in nature and not necessarily designed to recover historical or embedded costs. The Commission rejects MCI's proposal to price unbundled network elements at TELRIC cost, as calculated by the Hatfield model.<sup>11</sup>

For the unbundled loop categories, an \$18.20 rate should be set for 2-wire loops. From this base loop rate, we followed the relationship between BellSouth's 2-wire TELRIC and the TELRICs for other loop categories. The \$18.20 reconciles the difference between the two submitted basic loop study rates. Within 60 days of the date of this Order, BellSouth should provide TELRIC studies for those unbundled network elements that do not have a TELRIC estimate listed in BellSouth's best and final offer, including the NID and non-recurring charges.

Due to time constraints, the complexity of BellSouth's cost models, and the concerns discussed herein, the Commission finds that further investigation is warranted. The unbundled network element rates prescribed herein reflect the Commission's concerns regarding BellSouth's TELRIC studies. For now, the Commission will make

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<sup>11</sup> See, generally, McAnneny Testimony.

temporary adjustments to BellSouth's cost study results and set unbundled network element prices accordingly. See Appendix 1. These rates are intended to be temporary pending further investigation of the TELRIC studies and pending consideration of the manner in which non-traffic sensitive ("NTS") and NECA universal service payments support local service cost recovery. To the extent that adjustments to costs and prices are warranted, the Commission will conduct a true-up on a prospective basis.

Finally, the recovery of NTS revenue streams is also of concern to this Commission. In Administrative Case No. 355, the Commission signaled its intent to allow local exchange carriers to continue to recover their NTS revenues, currently recovered through toll access charges, through a universal service fund. Some years ago, each LEC's NTS revenue requirement was residually calculated and was intended to support local service. The Commission does not, however, intend that local service costs currently being recovered through access charges and ultimately through the universal service fund will be recovered twice.<sup>12</sup> After examining BellSouth's cost studies and pricing proposals, the Commission cannot ascertain whether or how these local service costs have been considered.

In setting initial prices herein, the Commission adhered to the following principles: if BellSouth furnished a TELRIC study, the price is equal to TELRIC; if no BellSouth TELRIC has been furnished, we looked to MCI's Hatfield TELRIC; if neither BellSouth nor MCI TELRIC study was relevant, we looked to BellSouth's proposed true-up price; and if none of the above were available, we looked to BellSouth's existing tariffed rate.

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<sup>12</sup> The Commission has related concerns regarding NECA support payments and the extent to which local service costs are recovered.

## IX. UNUSED TRANSMISSION MEDIA

Unused transmission media constitute a valuable resource to the public switched network, and therefore MCI should have the right to lease or buy it from BellSouth for the provision of telecommunications services. However, MCI should begin construction using any requested fiber within 6 months of the execution of a lease or buy contract. MCI should not propose to lease or buy unused transmission media for future unspecified uses, and BellSouth should not refuse to lease or sell it to MCI without legitimate business purposes. BellSouth should base this decision on its network and design and, if refusing a request, should show that it will need this unused transmission media within 5 years.

## X. RECONSTITUTION OF UNBUNDLED NETWORK ELEMENTS

BellSouth has argued throughout this proceeding that MCI should not be allowed to combine unbundled network elements to create an existing BellSouth retail service unless it pays the resale rate for that service. To do so, BellSouth insists, would allow MCI to circumvent the pricing requirements of the Act. The Act does indeed provide pricing standards for the sale of unbundled elements that differ from the pricing standards for the sale of "service" to another carrier. However, the Act, at Section 251(c)(3) also states unequivocally that a requesting carrier must be provided with "nondiscriminatory access to network elements on an unbundled basis" and that the incumbent must provide the elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Thus, the Act confers upon MCI the authority to combine unbundled network elements to

provide any service it chooses. Accordingly, BellSouth may not restrict its provision of unbundled network elements on the basis it suggests. Instead, unbundled network elements may be combined at unbundled element prices, without restriction, with other elements to provide telecommunications services. Without access to both the loop and switching elements, no telecommunications service could be provided through the combination of unbundled network elements as prescribed by the Act.

#### XI. CUSTOMER INFORMATION REGARDING POLES, DUCTS, AND CONDUITS

BellSouth argues that a pending license agreement for pole attachments and conduit occupancy with MCI addresses the relevant issues submitted for arbitration, although BellSouth is willing to amend the current contract to comply with the Act through good faith negotiations between parties. BellSouth cites Section 703 of the Act, which it interprets as preserving existing pole attachment agreements.

MCI opposes continuation of the existing agreement based upon the nondiscriminatory access requirements of Section 703.<sup>13</sup> MCI points out that the agreement was negotiated prior to the Act and was designed for more limited purposes. The agreement limits MCI to no more than 1500 pole attachments at any one time. MCI also claims that the agreement is discriminatory in reserving to BellSouth (1) the right to refuse attachment on the basis that a pole or guy is designated for BellSouth's exclusive use, and (2) the right to displace MCI in favor of additional facilities for itself

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<sup>13</sup> Section 703 states that a utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

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or another entity. Finally; MCI opines that BellSouth misinterprets Section 703 since it is a limited exemption that applies only to the rates of contracts agreed to prior to the FCC's rules governing access to pole attachments.

The FCC opines that Section 703 appears to mandate access every time a telecommunications carrier or cable operator seeks it.<sup>14</sup> Congress's intent, according to the FCC, is that utilities must be prepared to accommodate requests for attachments.<sup>15</sup> Finally, the FCC declares that allowing the pole or conduit owner to favor itself or its affiliate<sup>16</sup> would nullify, to a great extent, the nondiscrimination that Congress required.

The existing contract between BellSouth and MCI violates the intent of the Act. Limiting MCI to 1500 pole attachments at any one time may compromise MCI's opportunity to compete and is discriminatory. It also negates the Congressional mandate to provide access when reasonably possible. Further, the displacement of MCI's poles and guys in favor of those of BellSouth or another entity clearly establishes the groundwork for favoritism.

A new contract consistent with this order should be implemented. Customer-specific information included in engineering records need not be provided to the requesting carrier for the purpose of determining the availability of facility space. An ILEC may reserve

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<sup>14</sup> FCC Order at Paragraph 1123.

<sup>15</sup> Id. at Paragraph 1158.

<sup>16</sup> Id. at Paragraph 1170.



a portion of its facility space for its own use in those instances where the projected expansion is known and measurable. In specific situations where the parties cannot agree on the legitimacy of reserve capacity, or on safety, reliability, or engineering concerns, a complaint may be filed with the Commission to resolve the dispute.

## **XII. ELECTRONIC INTERFACES FOR ORDERING, REPORTING AND PROCESSING OF CUSTOMER INFORMATION**

MCI requests electronic interactive access to pre-service ordering; maintenance and repair; service order processing and providing; customer usage data transfer; and local account maintenance. The Commission agrees with MCI that such real-time access should be provided. Telecommunications competition requires real time access. Without it, competitors cannot offer customer service equal in quality to that provided by the incumbent.<sup>17</sup> Any ILEC that does not currently comply with this requirement should do so as expeditiously as possible. The January 1, 1997 FCC target does not appear feasible. Consequently, an interim solution must be put into place until July 1, 1997. Permanent solutions should be put into place by that date. The costs should be borne by the ALECs on a fairly apportioned basis. As competition develops, additional ALECs will be required to bear their share of these costs.

## **XIII. INTERIM LOCAL NUMBER PORTABILITY COST RECOVERY**

Each LEC should bear its own costs for providing remote call forwarding as an interim number portability option. The Act, at Section 251(e)(2), designates the FCC to determine number portability costs on a competitively neutral basis. According to the FCC,

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<sup>17</sup> FCC Order, Appendix B, Section 51.319.